

BOARD OF PERSONNEL APPEALS

MINUTES - JUNE 28, 2007 MEETING

PRESENT:

Jack Holstrom, Presiding Officer
Steve Johnson
Alice Whiteman
Robiyn Rowe, Alternate Labor Member

ABSENT:

Jay Reardon

STAFF ATTENDING:

Brian Hopkins, Board Attorney
Tonya McCormack
John Andrew

BOARD BUSINESS

APPROVAL OF MINUTES:

Johnson moved to approve the minutes of the September 22, 2006 board meeting. Whiteman seconded the motion. Holstrom, Johnson and Whiteman were present at the September 22, 2006 board meeting and these members voted aye to approve the minutes. Motion to approve minutes passed 3-0.

Whiteman moved to approve the minutes of the October 5, 2006 board meeting. Johnson seconded the motion. Holstrom, Johnson and Whiteman were present at the October 5, 2006 board meeting and these members voted aye to approve the minutes. Motion to approve minutes passed 3-0.

Approval of the minutes of the December 5, 2006, meeting was deferred until the July meeting of the Board when a quorum of members present for the December meeting would be available.

NEXT MEETING DATE:

The next meeting is set for July 26, 2007, in the second floor west conference room B of the Employment Relations Building, 1805 Prospect Avenue, Helena, Montana. If a transcript is prepared in time one case will be the Frazer Education Association vs. Frazer School District. The other case will be Wibaux Education Association vs. Wibaux School District. There was need to reschedule the Wibaux matter because of car difficulties experienced by member Whiteman on her way to the June 28, 2007 meeting. The Board also agreed to meet the fourth Thursday of each month to hear any pending appeals. The regular meetings of the Board of Personnel Appeals are conducted in the second floor west conference room B of the Employment Relations Building, 1805 Prospect Avenue, Helena, Montana (unless otherwise indicated).

MISCELLANEOUS BOARD BUSINESS

Appointments and reappointments:

Presiding Officer Holstrom congratulated member Johnson and alternate member Dudley for their reappointment to the Board. Also congratulated on her appointment, and present for her first meeting, was alternate member Robyn Rowe. Holstrom praised the reappointed members and the current members for their time, effort and dedication to the Board and stressed just how important that was for existing members and new ones as well.

Case updates:

The Board was advised that the unit clarification involving the Fairfield School District had been resolved by the parties and was no longer pending before the Board. Additionally, the unfair labor practice involving the Federation of Missoula County Employees was resolved and the petition for judicial review dismissed. The Board was further advised that Bonner case was set for oral argument before the Supreme Court on September 5, 2007. The time of argument is 9:30.

Change in process for findings of no probable merit:

The Board discussed a memo from Tonya McCormack addressing investigative reports involving finding of no probable merit. Historically if no merit was found to a charge, and it was appealed to the Board, the charge came directly to the Board. The members agreed this was problematic and concurred that findings of no merit, if appealed, should proceed to a hearing officer for creation of a record, and then, if appealed to the Board for review. A motion was made by member Johnson and seconded by alternate member Rowe that a rule be adopted to effectuate the change. The motion passed 3-0 with member Whiteman absent for the vote.

Governors memo:

The Board discussed the memo and agreed it contained good information and that future Board minutes should contain a listing of staff attending.

Public Comments (House Bill 94):

No comments were received.

ORAL ARGUMENTS

UNFAIR LABOR PRACTICE CHARGE NO. 38-2005 (2180-2005)

WIBAUX EDUCATION ASSOCIATION, MEA-MFT, NEA, AFT, AFL-CIO, COMPLAINANT VS WIBAUX BOARD OF TRUSTEES, K-12 SCHOOLS, DISTRICT NO. 6, DEFENDANT:

This case was postponed and will be rescheduled to the July meeting.

UNIT DETERMINATION 9-2006

MONTANA EDUCATION ASSOCIATION-MONTANA FEDERATION OF TEACHERS VS DAWSON COMMUNITY COLLEGE

Michael Dahlum, attorney for Dawson Community College and Richard Larson, attorney for MEA-MFT, presented oral argument in person. In order to address the issue of a pending district court case involving the same parties member Johnson made a motion that the Board not stay its proceedings and consider the case in light of the issues of community of interest, managerial exclusion for certain positions as well as the timeliness of the counter-

petition filed by Dawson Community College. The motion was seconded by alternate member Rowe and passed with Holstrom, Rowe and Johnson voting aye.

Johnson moved to affirm the recommended order of the hearing officer in its entirety and the motion failed for lack of a second.

Johnson subsequently moved that the portion of the recommended findings, conclusions and order pertaining to waiver of time limits be affirmed. Rowe seconded and the motion passed with Holstrom, Rowe and Johnson voting aye.

After further discussion Johnson moved to affirm the decision of the hearing officer. Rowe seconded and *the motion* passed with Johnson, Rowe and Holstrom voting aye.

A final motion by Johnson, and previously discussed by the Board, was to amend the recommended decision of the hearing officer to correct an erroneous cite to the section of law defining supervisory employees. The motion was seconded by Rowe and passed with Holstrom, Rowe and Johnson voting aye.

UNFAIR LABOR PRACTICE CHARGE NO'S 25-2006 AND 2-2007

BROCKTON TEACHERS' ASSOCIATION MEA-MFT VS BROCKTON BOARD OF TRUSTEES AND BROCKTON PUBLIC SCHOOLS AND BROCKTON BOARD OF TRUSTEES AND BROCKTON PUBLIC SCHOOLS VS BROCKTON TEACHERS ASSOCIATION

Michael Dahlum, attorney for the Brockton Board of Trustees and Brockton Public Schools and Richard Larson, attorney for the Brockton Teachers' Association, presented oral argument in person. Board member Whiteman moved to affirm the Findings of Fact, Conclusions of Law and Recommended Order of the hearing officer, and if passed, to consider the remedial portion of the order separately. Rowe seconded. Holstrom, Rowe and Whiteman voted aye and Johnson voted nay.

Johnson made a motion to take remand the order portion of the hearing officer decision in order to take evidence on damages suffered. Whiteman seconded and the motion passed with Holstrom, Whiteman, Rowe and Johnson voting aye.